Supreme Court, U.S.
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No. OFFICE OF THE CLERK

In The

Supreme Court of the United States

ERNEST LOBERG, HARRIET LOBERG and SHARON MENELY, individually and on behalf of the Class,

Petitioners,

v.

HALLWOOD REALTY PARTNERS, L.P., a Delaware limited partnership, and HALLWOOD INCOME REAL ESTATE INVESTORS A, a Delaware limited partnership,

Respondents.

On Petition For Writ Of Certiorari To The Illinois Appellate Court, First Judicial District

PETITION FOR WRIT OF CERTIOARI

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QUESTION PRESENTED FOR REVIEW

Whether due process prevents a class representative from agreeing to a settlement, after the time has passed for opting out of the class, in which some absent class members must release claims not described in the class notice and arising from a transaction separate from the transaction that gave rise to the class action litigation.

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DECISIONS BELOW

The order of the Illinois Supreme Court denying the petitioners' petition for leave to appeal is reported as *Loberg v. Hallwood Realty Partners, L.P.*, 2002 Ill. LEXIS 985 (Ill. Oct. 2, 2002) and attached as *App.* 1. The opinion of the Illinois Appellate Court, First District, is reported as *Loberg v. Hallwood Realty Partners, L.P.*, 323 Ill.App.3d 936, 753 N.E.2d 1020, 2001 Ill. App. LEXIS 519 (Ill. App. Ct. 1st Dist. 2001) and attached as *App.* 2-17. The memorandum opinion of the Circuit Court of Cook County, County Department, Chancery Division, is not reported but is attached at *App.* 18-24.

JURISDICTION

Summary judgment was entered in favor of the respondents by the Cook County Circuit Court on February 1, 2000. *App.* 18-24. The Illinois Appellate Court, First District, affirmed the judgment on June 29, 2001. *App.* 2-17.

On July 10, 2001, the petitioners filed an affidavit of intent to file a petition for leave to appeal to the Illinois Supreme Court and they timely filed their petition for leave to appeal on August 3, 2001. The Illinois Supreme Court denied the petitioners' petition for leave to appeal on October 2, 2002. *App.* 1.

This petition is filed under this Court's Rule 11. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

CONSTITUIONAL PROVISION INVOLVED

The Fourteenth Amendment to the Constitution of the United States provides, in pertinent part, that "No State shall make or enforce any law which shall abridge the privileges or immunities of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny any person with its jurisdiction the equal protection of the law." U.S. CONST. Amend. XIV, § 1.

STATEMENT OF THE CASE

This petition puts four-square before the Court the question whether due process prevents a class representative from agreeing to a settlement wherein some of the absent class members must release claims not described in the class notice and arising from a transaction separate from the transaction that gave rise to the class action litigation after the time has passed for opting out of the class.

The facts essential to this petition are not reasonably disputable. Petitioners brought this class action for rescission under the Illinois Securities Law on behalf of 41 Illinois residents who in 1985 and 1986 purchased shares in Equitec Income Real Estate Investment Fund A, a limited partnership, from unlicensed brokers. A class comprising the 41 Illinois residents was certified in 1995. In February 2000, the Circuit Court of Cook County, Illinois granted summary judgment in favor of the respondents based upon the judgment and release obtained from the petitioners in the *In re Equitec Rollup Litigation*. App. 18-24.

The *Rollup Litigation* was prosecuted in the United States District Court for the Northern District of California on behalf of a class defined as:

> all of the investors who owned shares in one of several Equitec limited partnerships as of April 30, 1990, and whose partnership interests were automatically exchanged for interests in Hallwood Realty Partners ("HRP") at closing on November 1, 1990 (the "*1990 Rollup*").

App. 25.

A class was certified in the *Rollup Litigation* and notice issued in August 1991. *App.* 26. The class notice stated that the claims asserted in the *Rollup Litigation* stemmed from misstatements and omissions of material fact in connection with the *1990 Rollup*. *App.* 26-27. There was nothing in the notice about claims arising from the initial sale of shares in the partnership, like those asserted by the petitioners in this lawsuit. Nor was there anything in the notice warning the petitioners that they had to opt out to preserve their unrelated Illinois Securities Law claims. The petitioners' Illinois Securities Law claims are unrelated because they arose from the initial sale of the partnership shares in 1985 and 1986 and not the *1990 Rollup*. The petitioners received the two-page class notice and had until September 28, 1991 to opt out. *App.* 28. The petitioners did not opt out. *App.* 5.

The *Rollup Litigation* settled three years later. Notice of the settlement issued in August 1994, and it reiterated that the disputed transaction in the *Rollup Litigation* was the *1990 Rollup*. *App.* 31-32. A fairness hearing was held and a final judgment was entered. After the judgment was entered, the class members were sent a proof of claim form

and release. To receive their share of the settlement, the petitioners had to return the claim form and sign the release, which they did. *App.* 30. Identical language was used in both the release and the judgment to define what the settled claims were.

A. Respondents are granted judgment based on the release obtained in the *Rollup Litigation*.

Several years later, the respondents moved the circuit court for summary judgment based upon the judgment and release obtained in the *Rollup Litigation*. Among other things, the petitioners argued in opposition that their claims could not have been released in the *Rollup Litigation* because the due process protections that are guaranteed absent class members by *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797 (1985) and *Hansberry v. Lee*, 311 U.S. 32 (1940), prevent a settlement wherein some of the class members must release claims arising from a transaction separate and unrelated from the transaction that gave rise to the class action litigation after the time has passed for opting out of the class. Petitioners argued that the class representatives in the *Rollup Litigation* could not agree to the release of the claims asserted in this lawsuit because they were only authorized to assert claims arising from the *1990 Rollup*. The petitioners' claims arose from their purchases of shares in Equitec A from brokers not licensed to sell those shares in Illinois. These purchases occurred three and fours years before the *1990 Rollup* – the transaction that spawned the *Rollup Litigation*.

Petitioners also argued that they were entitled to rely on due process to guarantee that the scope of the judgment

and release in the *Rollup Litigation* would only include claims stemming from the *1990 Rollup* because the class notice explained that was the transaction from which the claims at issue in the *Rollup Litigation* arose.

The circuit court held that the judgment and release in the *Rollup Litigation* barred the petitioners' Illinois Securities Law claims despite the fact that the petitioners' claims were not described in the class notice and the time had passed for opting out of the class.

B. The Illinois appellate court rejects petitioners' due process arguments.

The Illinois appellate court affirmed the circuit court's judgment, finding that the claims asserted in this lawsuit were barred by the judgment and release entered in the *Rollup Litigation*. *App.* 3; *see also Loberg, et al. v. Hallwood Realty Partners, L.P. et al.*, 323 Ill.App.3d 936, 753 N.E.2d 1020 (1st App. Ct. Ill. 2001). The court rejected the petitioners' argument that due process prevented the release of their Illinois Securities Law claims in the *Rollup Litigation*. The appellate court principally relied on *Matsushita Elec. Indus. Co., Inc. v. Epstein*, 516 U.S. 367 (1996), which it cited for the proposition that a class representative may not only release claims that were actually pled and litigated, but also claims that *could not* have been asserted in the settled action. Petitioners had argued that *Matsushita* is not authority for finding that the class representatives in the *Rollup Litigation* could release the petitioners' unrelated Illinois Securities Law claims because, unlike here, all of the claims released in *Matsushita* arose from the same transaction, namely Matsushita's 1990 tender offer for MCA, Inc. This distinguishing

fact, the petitioners argued, rendered *Matsushita* inapposite.

REASONS FOR GRANTING THE WRIT

The question raised by this petition – whether due process prevents a class representative from agreeing to a settlement wherein some of the absent class members must release claims not described in the class notice and arising from a transaction separate from the transaction that gave rise to the class action after the time for opting out of the class has passed – is of great public importance because it will define the rights of every person who participates in a class action. The Illinois appellate court – which answered "no" to the above question – has eviscerated the due process protections that absent class members have been guaranteed by this Court. The Illinois court's decision must be reversed.

I. Review is warranted because the Illinois court's decision sets a precedent for circumventing the adequacy-of-representation requirement.

Review of the Illinois court's decision is warranted because it is precedent for circumventing the adequacy-of-representation requirement. The class representatives in the *Rollup Litigation* sought and received authorization to represent a class with respect to claims stemming from the *1990 Rollup*. Despite the fact that their authority was limited, the class representatives in the *Rollup Litigation* agreed to release claims unrelated to the *1990 Rollup*. The Court should reverse the Illinois court's decision and hold

that the adequacy-of-representation requirement limits the scope of a release in a class action to the claims raised in the pleadings, described in the class notice, and commonly held by the members of the certified class.

Fundamental to the protection of absent class members is the adequacy-of-representation requirement. *Hansberry v. Lee*, 311 U.S. 32, 44-45 (1940). The touchstone of adequate representation is commonality of interests between the class representatives and the class members. *General Telephone Co. of the Southwest v. Falcon*, 457 U.S. 147, 156 (1982) ("a class representative must be part of the class and 'possess the same interests and suffer the same injury' as the class members.") The adequacy-of-representation requirement restricts the class representatives' authority to prosecute and release claims to those that they have in common with the entire class. *Amchem Products Inc. v. Windsor*, 521 U.S. 591 (1997).

The Second Circuit followed these principles in *National Super Spuds, Inc. v. New York Mercantile Exchange*, 660 F.2d 9, 16-17 (2d Cir. 1981), reversing a district court's approval of a settlement that required a subset of class members to release claims that the class representatives did not have and that stemmed from facts not plead in the complaint.[1] The Second Circuit wrote:

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[1] The district court in *National Super Spuds* certified a class of purchasers of potato futures contracts who liquidated the contracts between April 13, 1976, and May 7, 1976. The class members alleged that the wrongful conduct of the defendants had depressed the price of those contracts. Class counsel and the defendants then agreed to a settlement that released both the claims alleged in the complaint and

(Continued on following page)

> [t]he most fundamental principles underlying class actions limit the powers of the representative parties to the claims they possess in common with other members of the class.

National Super Spuds, 660 F.2d at 16. The court then explained how these fundamental principles create a link between adequacy of representation and the power to release claims:

> [h]aving received authority to represent class members solely with respect to liquidated contracts, plaintiffs had no power to release any claims based on any other contracts.

National Super Spuds, 660 F.2d at 18. The court noted that the consequence of the due process limitations is that a release in a class action settlement can be no broader than the *res judicata* effect of a final judgment – *i.e.*, it may only include claims raised in the pleadings, described in the class notice, and commonly held by the members of the certified class. (*Id.*) The class notice in the *Rollup Litigation* made plain that the class representatives only sought and received authorization to prosecute claims arising from the *1990 Rollup*. They never sought or received authorization to prosecute any claims relating to the initial sale of shares in Equitec A or any other limited partnership. The class representatives in the *Rollup Litigation* were not members of the class certified in this action because they did not purchase their shares in Illinois from unlicensed brokers. The class representatives

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any claims regarding futures contracts that were liquidated after May 7, 1976.

in the *Rollup Litigation*, therefore, could not have asserted the claims asserted here by the petitioners in the *Rollup Litigation* or elsewhere.

The Illinois appellate court distinguished *National Super Spuds* based on the fact that the petitioners here signed a release. *App.* 11; *see also Loberg*, 323 Ill.App.3d at 942, 753 N.E.2d at 1025-26. But this distinction ignores that the release could not include the petitioners' Illinois Securities Law claims because the settlement authority of the class representatives in the *Rollup Litigation* was limited to claims arising from the *1990 Rollup*. The signing of the release by the petitioners did not enlarge the release beyond what was negotiated or could have been negotiated by the class representatives in the *Rollup Litigation*. Instead, when the petitioners signed the release, like every other member of the *Rollup* class, they released only claims relating to the *1990 Rollup* because those were the only claims that the class representatives in the *Rollup Litigation* had authority to release.

Moreover, the release had no independent significance because the opt out period had already passed and the district court's judgment terminated the same claims as the release. Identical language in both the release and the judgment defined what the settled claims were. Indeed, the Illinois appellate court held that the plaintiffs' claims were barred not just by the release, but also by the California judgment. *App.* 3; *see also Loberg*, 323 Ill.App.3d at 937, 753 N.E.2d at 1022.

II. Review is warranted to correct the Illinois court's wrongful extension of this Court's holding in *Matsushita v. Epstein* to allow a class representative to release claims arising from a transaction unrelated to the transaction that gave rise to the class action.

Review of the Illinois court's decision is warranted because it wrongfully extends this Court's holding in *Matsushita Elec. Indus. Co., Inc. v. Epstein*, 516 U.S. 367 (1996) to allow the release of claims arising from unrelated transactions. The Illinois appellate court cited *Matsushita* for the proposition that a class representative may not only release claims that were actually plead and litigated, but also claims that *could not* have been asserted in the settled action. *App.* 14; *see also Loberg*, 323 Ill.App.3d at 944, 753 N.E.2d at 1027. But *Matsushita* is not authority for the Illinois court's decision because it did not decide whether a class action settlement that releases claims arising from an unrelated transaction violates due process. The question in *Matsushita* was a "whether a federal court may withhold full faith and credit from a state-court judgment approving a class action settlement simply because the settlement releases claims within the exclusive jurisdiction of the federal courts." *Matsushita*, 516 U.S. at 369. The Supreme Court answered no – holding that a federal court must give full faith and credit to a state court judgment releasing state law and exclusively federal claims if the federal claims and the state law claims arose from the *same transaction* and the federal court determines that the courts in that state would give preclusive effect to the judgment *Matsushita*, 516 U.S. at 369, 375.

Justice Thomas' majority opinion and Justice Ginsberg's concurring opinion both acknowledge that *Matsushita did*

not decide whether the class representatives and their counsel failed to adequately represent the interests of the class when they agreed for minimal consideration to release all state and federal claims stemming from Matsushita's 1990 tender offer for MCA, Inc. *Matsushita*, 516 U.S. at 379, n.5, 399. *Matsushita* did not consider the due process claim because it was outside the scope of the question presented to the Court. *Matsushita*, 516 U.S. at 379, n.5. The petitioner in *Matsushita* sought review under the full faith and credit clause.

The due process claim raised in this petition is even more compelling than the one acknowledged by Justices Thomas and Ginsberg but not decided in *Matsushita* because the unpled claims that were released here arose from an *unrelated* transaction after the opt out period passed. At least in *Matsushita* the class representatives had all of the claims that they agreed to release, since all claims stemmed from a common transaction. Here, the class representatives agreed to release claims that they did not assert, that were not described in the class notice and, because they arose from a transaction separate from the transaction that gave rise to the *Rollup Litigation*, that the class representatives did not even have.

Matsushita is inapposite for an additional reason – the state class in *Matsushita* was a settlement class, and the settlement notice warned class members to opt out if they wanted to pursue their federal claims. *Matsushita*, 516 U.S. at 385. The Illinois appellate court acknowledged that the *Rollup* class was certified in August 1991, and that the putative class members had until September 28, 1991 to opt out of the litigation or be bound by the judgment. *App.* 4-5; *see also Loberg*, 323 Ill.App.3d at 938, 753 N.E.2d at 1022. It also acknowledged that the *Rollup Litigation* settled three

years later and that a fairness hearing was held. *App.* 5-6; *see also Loberg,* 323 Ill.App.3d at 938-39, 753 N.E.2d at 1027. Later in its opinion, the appellate court, inexplicably, recasts the *Rollup Litigation* as a settlement class and states that the petitioners could have opted out of that litigation to preserve their Illinois Securities Law claims. *App.* 14; *see also Loberg,* 323 Ill.App.3d at 944, 753 N.E.2d at 1027. The *Rollup Litigation* was not a settlement class, and the petitioners could not have opted-out of the settlement because, as plainly shown by the appellate court's statement of facts, the time for opting out of the litigation passed three years earlier.

III. Review is warranted because the Illinois appellate court has rendered the due process protections of notice and to opt out impotent.

Phillips Petroleum Co. v. Shutts held that due process in a class action requires proper notice and an opportunity to opt out of the litigation. 472 U.S. 797, 812 (1985). The right to notice and to opt out is useless if, as the Illinois appellate court held, after the time for opting out passes, absent class members can be forced to give up claims not described in the class notice and never at issue in the class action.

The petitioners' Illinois Securities Law Claims, which the Illinois court found were released in the *Rollup Litigation,* arose from the initial sale of shares in the Equitec A and not the *1990 Rollup*. The class notice in the *Rollup Litigation* made plain that the claims asserted in that lawsuit arose from the *1990 Rollup* and not from the initial sale of shares. Nothing in the class notice told the petitioners that they had to opt out of the *Rollup Litigation* to preserve their Illinois Securities Law claims. The notice did state that anyone who did not opt out would be

bound by the judgment. Because the petitioners would be bound by the judgment, they are entitled to rely on due process to guarantee that the scope of the judgment will only include claims stemming from the *1990 Rollup* because that was the transaction described in the class notice as having given rise to class litigation.

The Supreme Court should reverse the Illinois appellate court and hold that absent class members have a constitutional right to rely on the class notice, and that claims not encompassed by it and arising from an unrelated transaction cannot be released after the opt out period passes.

CONCLUSION

This petition for a writ of certiorari should be granted.

Respectfully submitted,

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October 2, 2002

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No. 92084 – Ernest Lobery et al., etc., petitioners, v. Hallwood Realty Partners, L.P., etc., et al., respondents. Leave to appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on October 24, 2002.

SECOND DIVISION
JUNE 29, 2001

No. 1-00-0665

ERNEST LOBERG, HARRIET LOBERG and SHARON MENELY, Indiv. and on Behalf of the Class, Plaintiffs-Appellants, v. HALLWOOD REALTY PARTNERS, L.P., a Delaware Limited Partnership, and HALLWOOD INCOME REAL ESTATE INVESTORS A, a Delaware Limited Partnership, Defendants-Appellees.	Appeal from the Circuit Court of Cook County No. 88 CH 4670 (consolidated) 89 CH 4112 The Honorable Thomas A. Hett, Judge Presiding.

Justice COUSINS delivered the opinion of the court:

In 1988, plaintiffs-appellants, Ernest Loberg, Harriet Loberg, and Sharon Menely, individually and on behalf of the class certified in September 1995, filed suit against Equitec Financial Group (Equitec Financial) and Equitec Fund A (Equitec A) seeking to rescind their purchases of Equitec A limited partnership interests on behalf of 41 Illinois residents who purchased the limited partnership interests in 1985 and 1986 from two unlicensed brokers. In 1989 Hallwood Realty Corporation (Hallwood) purchased the general partnership interests of 11 Equitec real estate limited partnerships.

In June 1990 Hallwood Realty Corporation issued a proxy statement that solicited the consent of the limited partners of 11 Equitec real estate limited partnerships sponsored by Equitec Financial to exchange or "roll-up" their limited partnership interests in their respective real estate limited partnerships for newly issued units of limited partnership interests in Hallwood Realty Partners, L.P. (HRP). This solicitation led to the litigation known as the Equitec Roll-up Litigation (Roll-up litigation), filed in California, in which the plaintiffs alleged that HRP, Equitec, and other defendants violated federal and state laws in conducting the 1990 proxy solicitation. In July 1994 plaintiffs amended their complaint in the Illinois litigation to add Hallwood Income Real Estate Investors A (Hallwood A) and HRP as defendants/successors-in-interest. The Roll-up litigation was settled in 1994.

On February 1, 2000, the trial court in the Illinois litigation granted summary judgment in favor of Hallwood A and HRP based upon the judgment and release by plaintiffs in the California Roll-up litigation.

The central issue in this case is whether the plaintiffs' claims in their Illinois class action litigation were released by the California judgment and release in the Roll-up litigation. We answer in the affirmative.

BACKGROUND

In 1988, plaintiffs filed suit against Equitec Financial and Equitec A seeking to rescind their purchases of Equitec A limited partnership interests purchased from unlicenced brokers Kenneth Boula and Dean Gordon. The general partner of Equitec A was Equitec Financial. Plaintiffs' suit against Equitec Financial and Equitec A

was one of several class action suits filed due to purchases of securities from the same unregistered brokers. These suits were later consolidated under *Hess v. I.R.E. Real Estate Income Fund, Ltd.*, 255 Ill. App. 3d 790, 629 N.E.2d 520 (1993).

In June 1990 Hallwood Realty Corporation issued a proxy statement that solicited the consent of the limited partners of 11 Equitec real estate limited partnerships sponsored by Equitec Financial to exchange or "roll-up" their limited partnership interests in their respective real estate limited partnerships for newly issued units of limited partnership interests in HRP. This solicitation led the Equitec Roll-up litigation. The plaintiffs in the Roll-up litigation alleged that HRP, Equitec and other defendants violated federal and state law in conducting the 1990 proxy solicitation.

In August 1991 a class was certified and a court-ordered notice of pendency of class action (Notice) was sent to class members in the Roll-up litigation. That Notice was addressed to: "ALL PERSONS WHO HELD INTERESTS AS OF APRIL 30, 1990, IN ANY OF THE FOLLOWING EQUITEC SPONSORED REAL ESTATE LIMITED PARTNERSHIPS AND EXCHANGED THOSE INTERESTS FOR LIMITED PARTNERSHIP INTERESTS IN HALLWOOD REALTY PARTNERS, L.P., AS A RESULT OF THE CLOSING OF THE SUBJECT EXCHANGE TRANSACTION ON NOVEMBER 1, 1990." Those persons constituted the class for the pending action. The judgment, whether favorable or not, would apply to the class members' claims and would be binding upon them and the defendants. The Notice further stated, "[i]f you wish to be included in the Plaintiff Class, you do not need to take any action." However, in order to be excluded from the class, a

class member was required to send a request along with other pertinent information to a California post-office box by September 28, 1991. Plaintiffs in the instant case did not request exclusion.

The Roll-up litigation was settled in 1994. The notice of the proposed settlement, which was dated August 15, 1994, was addressed to: "ALL PERSONS WHOSE INTEREST IN EQUITEC REAL ESTATE LIMITED PARTNERSHIPS WERE EXCHANGED FOR SECURITIES ISSUED BY HALLWOOD REALTY PARTNERS, L.P. ALL PERSONS WHO, ON APRIL 11, 1994, OWNED A BENEFICIAL INTEREST IN HALLWOOD REALTY PARTNERS, L.P. ('HRP UNITHOLDERS')." The notice of proposed settlement also provided the following definition of "settled claims":

> "'Settled Claims' means any and all claims, causes of action, suits, demands or requests for relief, known or unknown, that are or were asserted or could have been asserted in the Actions and each and every complaint filed in the Actions, Plaintiffs' Statement of Issues To Be Tried and all amendments thereto, or claims which are otherwise referred to or described in any of the letters, pleadings, briefs, expert reports, trial testimony or deposition testimony * * * , and all such claims which could have been asserted by the Settling Plaintiffs in any other action or proceeding against the Settling Defendants which arises or relates to the subject matter of these Actions or any matters, transactions, occurrences or omissions referred to in the pleadings, motions, discovery, trial or other papers and proceedings in any of these Actions, including but not limited to, claims relating to fees paid to Hallwood

> Group or its affiliates by HRP, claims for violations of the federal securities laws, state securities laws, * * * and actions arising under state statutory or common law * * * up through the entry of the District Court's Notice Order."

The notice of proposed settlement also provided that any class member could be heard at the settlement hearing and could object to or express his or her views regarding the proposed settlement. Plaintiffs did not object to the proposed settlement. The subsequent release that plaintiffs signed included the definition of "Settled Claims" found in the notice of proposed settlement.

In 1994, plaintiffs also sought to amend their complaint in the pending Illinois class action litigation to add Hallwood, alleging that the defendants were responsible as successors-in-interest for the prior conduct of Equitec and Equitec Fund A. The motion to amend was allowed. In answering plaintiffs' amended complaint, the Hallwood defendants asserted both that plaintiffs had already released their claims against the Hallwood defendants in connection with the recent settlement of the Roll-up litigation and that plaintiffs' claims were barred by the doctrine of *laches.*

In September 1995, plaintiffs' motions to consolidate and be certified as a class in the Illinois litigation were granted. Also in 1995, plaintiffs moved for summary judgment in the Illinois litigation against Hallwood A and HRP. The motion against Hallwood A and HRP was denied because there were remaining factual issues as to liability and defendants' assertion of *laches* as an affirmative defense.

In May 1999, the Hallwood defendants filed a motion for summary judgment for the Illinois class action suit, asserting that plaintiffs released their claims in the instant case in the settlement of the Equitec Roll-up action and plaintiffs' claims were barred by the doctrine of *laches*. In October 1999, plaintiffs filed a motion in opposition to defendants' motion for summary judgment. The trial judge heard oral argument on the issues raised in the defendants' motion for summary judgment on January 26, 2000. In an order dated February 1, 2000, the trial court granted defendants' motion for summary judgment. The order provided:

> "[I]t must be pointed out that the order entered by the Federal Court in the Roll-up Litigation approving the settlement and releases, specifically found that the members of the class had been afforded due process.
>
> * * *
>
> * * * [T]he release that class plaintiffs signed in the Equitec Roll-up Litigation clearly encompasses the claims and causes of actions in the case at bar. I have heard no arguments that convince me that the Release should not be enforced. * * * They agreed to release Equitec and Hallwood from all claims referred to in the pleadings (here, the sale of Real Estate Trusts) and more specifically, agreed to release all claims for violations of state security laws, for money damages, rescission, or actions arising under state statutory or common law. For this promise, class plaintiffs received one million dollars. A bargain is a bargain. * * * They never objected when they had an opportunity to do so. They cannot maintain this action against the Hallwood defendants.

> Because of this ruling, I am not required to address the Laches [*sic*] question."

The trial judge also held that defendants' contention that the class plaintiffs' agreed to release every claim that arises from the Roll-up litigation was incorrect.

On January 5, 2000, plaintiffs sought leave to assert an additional count against HRP. Plaintiffs' motion alleged that Hallwood A and HRP knew or should have known that Hallwood A would likely incur debts beyond its ability to pay as they came due. Moreover, the motion alleged that the transfer of partnership assets to Hallwood Realty Partners was done to hinder, delay, or defraud the class. The trial court denied plaintiffs' motion to amend on February 7, 2000.

The plaintiffs are appealing the orders entered on February 1, 2000, and February 7, 2000, which, respectively: (1) granted summary judgment in favor of defendants-appellees Hallwood Income Real Estate Investors A and Hallwood Realty Partners, Inc., based upon a release given in an unrelated class action in California; and (2) denied plaintiffs-appellants leave to file a fraudulent-transfer amendment to the class action complaint. We affirm.

ANALYSIS

The standard of review on appeal from a grant of summary judgment is *de novo*. *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 102, 607 N.E.2d 1204 (1992). Summary judgment is appropriate where the pleadings, depositions, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving

party is entitled to judgment as a matter of law. *Purtill v. Hess,* 111 Ill. 2d 229, 240-44, 489 N.E.2d 867 (1986).

The plaintiffs contend that the trial court erred in granting summary judgment in favor of the defendants based upon the judgment and release in the Roll-up litigation because the Roll-up representative could only settle Roll-up claims. The defendants respond that the claims in the instant case are barred because they were included in the settlement agreement and release in the Roll-up litigation. The trial court found that plaintiffs' claims in the Illinois litigation were barred because the claims were released in the Roll-up litigation, and it granted summary judgment in favor of the defendants. Based upon our analysis, which follows, we affirm the trial court's decision granting summary judgment in favor of the defendants.

A release is a contract whereby a party abandons a claim to the person against whom the claim exists. *International Insurance Co. v. Sargent & Lundy*, 242 Ill. App. 3d 614, 622, 609 N.E.2d 862 (1993). Accordingly, the interpretation of a release is governed by contract law. *Farm Credit Bank v. Whitlock,* 144 Ill. 2d 440, 447, 581 N.E.2d 664 (1991). Thus, the rights of the parties are limited to the terms expressed in the agreement and a release will not be construed to release claims not within the contemplation of the parties. *International Insurance Co.*, 242 Ill. App. 3d at 622-23. The intention of the parties controls the scope and effect of the release, and this intent is discerned from the release's express language as well as the circumstances surrounding the agreement. *Carlile v. Snap-on Tools,* 271 Ill. App. 3d 833, 838, 648 N.E.2d 317, 321 (1995). Where the terms of the release are clear and

explicit, the court must enforce the release as written. *International Insurance Co.*, 242 Ill. App. 3d at 623.

First, we note that the plaintiffs here did not opt out of the Roll-up settlement agreement, although they could have, and the record does not indicate that the plaintiffs ever raised an objection to the breadth and generality of the release. It is clear from the language of the release that the intention of the parties was to discharge the settling defendants of claims "including but not limited to * * * claims for violations of the federal securities laws, state securities laws, * * * [and] rescission."

In plaintiffs' motion in opposition to the defendants' motion for summary judgment, plaintiffs assert that the 1991 class action notice did not mention the 1988 lawsuit, and therefore, the plaintiffs did not have reason to believe that they had to opt out of the Roll-up litigation to preserve their right to maintain their state securities laws claims. In class actions, due process requires that members of the plaintiff class have an opportunity to be heard and to participate in the litigation, an opportunity to opt out of the litigation, and adequate representation of absent class members' interests. *Security Pacific Financial Services v. Jefferson,* 259 Ill. App. 3d 914, 921, 632 N.E.2d 299 (1994).

Plaintiffs assert that "the requirement of adequate representation prevents class representatives from releasing claims they do not have." Plaintiffs rely on *National Super Spuds, Inc. v. New York Mercantile Exchange*, 660 F.2d 9 (2d Cir. 1981). In *National Super Spuds*, the issue was whether the trial court erred in approving a proposed settlement that barred all members of the class who had not opted out from bringing any claim based on liquidated

contracts, and barred members of the class from bringing any other claims they might be able to assert against defendants, including claims based on unliquidated contracts. The Second Circuit reversed the district court's approval of the settlement, reasoning that the final settlement agreement expanded the scope of the claims to be released without giving proper notice to the class members. In *National Super Spuds,* the notice sent to class members referred only to claims based on liquidated contracts and gave no indication that the action would concern any other claims. *National Super Spuds*, 660 F.2d at 17.

National Super Spuds is inapposite. In *National Super Spuds,* the court held, "[H]aving received authority to represent class members solely with respect to liquidated contracts, plaintiffs had no power to release claims based on other contracts." *National Super Spuds*, 660 F.2d at 18. The instant case does not involve a difference between claims based on liquidated contracts and claims based on other contracts. In the instant case, the same (Equitec A) securities are involved in the Roll-up litigation and the Illinois class action litigation. Additionally and importantly, plaintiffs in *National Super Spuds* actually objected in the settling case to the scope of the releases and never signed them. *National Super Spuds*, 660 F.2d at 14. In contrast, plaintiffs in the instant case personally chose to execute the releases in exchange for a portion of the settlement funds. Also, in the instant case plaintiffs do not challenge the propriety of certifying the class in the *Equitable Roll Up Litigation.* Moreover, unlike *National Super Spuds,* the notice of proposed settlement in the instant case specifically set forth the exact and broad scope of the releases to be provided.

Plaintiffs also argue that there is no connection between the events that gave rise to the Roll-up litigation and the events that gave rise to this lawsuit. However, both class action law suits involve the same (Equitec A) securities. Both class action suits refer to the purchase of those Equitec A securities during the 1980s. The settlement agreement in the Roll-up litigation expressly released claims relating to state securities, rescission, and matters referred to in the pleadings. The fourth amended complaint specifically provides a description of Equitec's involvement in real estate investment programs in which investors were furnished with a prospectus and signed a limited partnership agreement prepared by Equitec. Based upon the statement provided in the release and the events listed in the pleadings, the Roll-up release clearly precludes the Illinois class action litigation at issue here.

Plaintiffs also contend that the right to opt out, guaranteed by due process, prevented the Roll-up settlement from encompassing their claims. Plaintiffs further assert that due process requires notice that describes the action and the plaintiffs' rights in the litigation, and provides plaintiffs, once they are informed of their rights, an opportunity to opt out of the litigation. In opposition, the defendants rely on *Matsushita Electric Industrial Co. v. Epstein,* 516 U.S. 367, 134 L. Ed. 2d 6, 116 S. Ct. 873 (1996), and contend that *Matsushita* supports their contention that plaintiffs in the Roll-up litigation could, consistent with due process, release their Illinois securities law claims. In our view, *Matsushita* supports the defendants' contention.

In *Matsushita*, a class action was filed in the Delaware Court of Chancery against MCA, Inc., and its directors for breach of fiduciary duty and waste of corporate

assets and Matsushita was added as a defendant for allegedly conspiring with MCA's directors to violate Delaware law. *Matsushita*, 516 U.S. at 370, 134 L. Ed. 2d at 15, 116 S. Ct. at 876. The Delaware suit was based on state law claims, and while it was pending, a federal suit was filed in California, again naming Matsushita as a defendant. The district court declined to certify the class, entered summary judgment for Matsushita, and dismissed the case. The federal plaintiffs appealed to the Ninth Circuit Court of Appeals. After the federal plaintiffs filed their notice of appeal, but before the Ninth Circuit issued its decision, the Delaware suit negotiated a settlement. A notice of the proposed settlement was sent to class members and published in a national newspaper. That notice informed the class members of their right to request exclusion from the settlement class and to appear and present argument at a settlement hearing. *Matsushita,* 516 U.S. at 371, 134 L. Ed. 2d at 15, 116 S. Ct. at 876. Respondents, who were members of both the state and federal plaintiff classes, did not opt out of the settlement class and did not appear at the hearing to contest the settlement or representation of the class. *Matsushita,* 516 U.S. at 372, 134 L. Ed. 2d at 16, 116 S. Ct. at 877.

Matsushita invoked the Delaware judgment as a bar to the Ninth Circuit appeal. *Matsushita,* 516 U.S. at 372, 134 L. Ed. 2d at 16, 116 S. Ct. at 877. The Ninth Circuit rejected that argument. *Matsushita,* 516 U.S. at 372, 134 L.Ed.2d at 16, 116 S. Ct. at 877. The United States Supreme Court reversed, reasoning that the federal claims were "clearly within the scope of the release in the judgment, since the judgment specifically refers to lawsuit." *Matsushita,* 516 U.S. at 378, 134 L. Ed. 2d at 20, 116 S. Ct. at 880. In *Matsushita,* the United States Supreme Court

reasoned that if the class action plaintiffs wished to preserve their right to litigate exclusively federal claims in federal court, they should have either opted out of the settlement class or objected to the release of any exclusively federal claims. *Matsushita,* 516 U.S. at 385, 134 L. Ed. 2d at 24, 116 S. Ct. at 883. Further, the Court reasoned that as shareholders of MCA's common stock, the respondents were part of the state plaintiff class and since they did not opt out, they were therefore bound by the judgment. *Matsushita,* 516 U.S. at 379, 134 L. Ed. 2d at 21, 116 S. Ct. at 880. Significantly, the Court held that even if the claim could not have been raised in the court that rendered the settlement judgment, the settlement judgment barred subsequent pursuit of that claim in federal court because the claims were within the scope of the release. *Matsushita,* 516 U.S. at 377-78, 134 L. Ed. 2d at 19, 116 S. Ct. at 879-80.

Similarly, in the instant case, plaintiffs could have either opted out of the settlement class or objected to the release of the state securities laws claims if they wished to preserve absolutely their right to litigate exclusively Illinois securities claims.

Thompson v. Edward D. Jones & Co., 992 F.2d 187 (8th Cir. 1993), is also instructive. In *Thompson,* the issue before the Eighth Circuit was whether the appellant's claims in a South Dakota action regarding certain investments were barred by the final judgment and dismissal in a class action filed in the federal court of Arkansas. *Thompson,* 992 F.2d at 188. The Eighth Circuit answered in the affirmative. *Thompson,* 992 F.2d at 188. In *Thompson,* the appellant asserted that the scope of the Arkansas settlement did not cover her South Dakota claims because her suitability claims were inherently individual in nature

and could not have been brought in the class action without destroying the commonality, typicality, and adequacy of representation requirements of Rule 23(a) of the Federal Rules of Civil Procedure. *Thompson,* 992 F.2d at 190. The *Thompson* court reasoned that it could not ignore the "broad language" of the notice and the final judgment of dismissal which barred commencing any action related to the limited partnerships investments, including those which an individual class member may have had, but knowingly chose to relinquish by remaining a member of the class. *Thompson,* 992 F.2d at 190. The court also held that the appellant in *Thompson* had sufficient notice of the terms of the proposed settlement and adequate opportunity to opt out of the class. *Thompson,* 992 F.2d at 191.

Another instructive case is *In re VMS Securities Litigation,* 145 F.R.D. 458 (N.D. Ill. 1992). In *VMS,* a securities broker moved for enforcement of a securities fraud settlement agreement against three class members, to partially vacate an arbitration award in favor of two class members, and to enjoin further prosecution of released claims in arbitration proceedings. *VMS,* 145 F.R.D. at 459. The final settlement judgment included a release of all asserted or potential class or individual claims related to the purchase of VMS securities and expressly enjoined all parties from asserting any released claim. Similar to the instant case, a clause in the release in *VMS* included a release of all federal claims, class claims, and claims under state or common law that had been or might have been asserted in the litigation or any other court or forum in connection with any facts or occurrences involving the funds. *VMS,* 145 F.R.D. at 463. The court in *VMS* held that plaintiff expressly released any claim or potential claim relating to any facts or transactions associated with

the subject funds' securities. *VMS,* 145 F.R.D. at 462. The court also held that the other appellants' arbitration claims arising from their investment in one of the funds in the VMS class action were "plainly encompassed by the settlement release clause embodied in the final judgment" and, therefore, could not be litigated further. *VMS,* 145 F.R.D. at 463. Similar to *VMS,* we hold that the claims in the Illinois litigation involving the state securities laws were plainly encompassed by the settlement release clause embodied in the final judgment entered in the Roll-up litigation and are, therefore, barred.

Plaintiffs' next contention is that "the order denying plaintiffs leave to amend their complaint to add a fraudulent conveyance claim against HRP should be vacated because it was based on the Court's erroneous summary judgment order." Defendants respond that the trial court's order denying plaintiffs' leave to file a fraudulent-transfer claim is not properly before this court because that ruling did not constitute a final order.

Plaintiffs filed a notice of motion for leave to file an additional count on December 30, 1999. The trial court granted defendants' motion for summary judgment on February 1, 2000. On February 7, 2000, the trial court entered an order providing: "(1) that there is no just reason to delay the appeal or enforcement of the order of February 1, 2000; [and] (2) that plaintiffs' motion to add a fraudulent transfer amendment to class action complaint is denied." Because we affirm the trial court's grant of defendants' motion for summary judgment, we do not reach the contentions of the parties on this issue.

Finally, the defendants contend that the doctrine of *laches* bars the instant suit. Specifically, defendants assert

that the plaintiffs' unreasonable delay in holding defendants secondarily liable for Equitec's wrongful conduct has prejudiced them. Again, because we affirm the trial court's ruling relative to the summary judgment, we do not reach the *laches* issue.

For the foregoing reasons, the trial court's grant of defendants' motion for summary judgment is affirmed.

Affirmed.

CAHILL, P.J., and GORDON, J., concur.

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT – CHANCERY DIVISION

KUGLER, et al., Plaintiffs,	)	
vs.	)	Nos. 88 CH 4670
I.R.E. REAL ESTATE INCOME FUND, et al.,	)	88 CH 4112
	)	89 CH 4117
	)	Consolidated
(The Motion of The Hallwood Defendants),	)	
Defendants.	)	

ORDER

This case has come before the Court on the Hallwood defendants' Motion for Summary Judgment, the class plaintiffs' Response, Hallwood's Reply and the class plaintiffs' Surreply. I have heard oral argument on the issues raised in the Motion for Summary Judgment and, on January 26, 2000, I took the Motion under advisement.

The Hallwood defendants predicate their request on two grounds:

1.) The class plaintiffs signed a release in a matter commonly known as *The Equitec Roll-Up Litigation* and as a result of that release, received a million dollars in consideration. The terms of that release encompass the litigation here before this Court. Moreover, the Federal Court's approval of that release bars the class plaintiffs from maintaining

this litigation, an order that operates as res judicata; and

2.) The class plaintiffs waited too long to bring the Hallwood defendants into this case, originally brought against Equitec, causing injury to Hallwood and requiring the Court to bar the litigation against the Hallwood defendants on the grounds of Laches.

The terms of the release signed by the class plaintiffs reads as follows:

> "Settled Claims" means any and all claims, causes of action, suits, demands or requests for relief, known or unknown, that are or were asserted or could have been asserted in the Actions and each and every complaint filed in the Actions, Plaintiffs' Statement of Issues To Be Tried and all amendments thereto, or claims which are otherwise referred to or described in any of the letters, pleadings, briefs, expert reports, trial testimony or deposition testimony (whether direct, indirect, class, or derivative, and whether representative or individual in nature), and all such claims which could have been asserted by the Settling Plaintiffs in any other action or proceeding against the Settling Defendants which arises or relates to the subject matter of these Actions or any matters, transactions, occurrences or omissions referred to in the pleadings, motions, discovery, trial or other papers and proceedings in any of these Actions, including but not limited to, claims relating to fees paid to Hallwood Group or its affiliates by HRP, claims for violations of the federal securities laws, state securities laws, Racketeering Influences and Corrupt Organizations Act, breach of fiduciary duty, waste, mismanagement, money damages, rescission,

> self-dealing, and actions arising under state statutory or common law (whether or not the relief requested is for money damages, "attorneys' fees or some form of injunctive or other equitable relief) up through entry of the District Court's Notice Order."

The Hallwood defendants maintain that the terms of the release encompass all claims referred to in the pleadings in the Equitec Roll-Up Litigation, and in such pleadings it is asserted that the Roll-Up Litigation occurred because Equitec sold real estate trusts throughout the nation, leading to Hallwood purchasing Equitec's interests, and causing certain claims about that purchase to be brought to court.

There is no factual dispute about the fact that Equitec sold Real Estate Trusts throughout the United States. In fact, this Illinois litigation, which among other requests, asks for rescission of those contracts, says that the sales in Illinois violated Illinois Security Laws.

Class plaintiffs reply that the references in the pleadings are only 3 or 4 paragraphs among over 400 pages of pleadings and, in effect, how can the plaintiffs be charged with reading all of that material? However, the class plaintiffs were ably represented in the Roll-Up Litigation by expert and competent lawyers, versed in the field of class litigation, and I presume they read the release and knew what its contents meant. It is clear to me that by signing, in exchange for one million dollars, the class plaintiffs were giving up

> "all claims, causes of actions . . . known or unknown, that . . . could have been asserted . . . or claims which are otherwise referred to or described in any of the . . . pleadings, . . . class or

> derivative . . . and all such claims which could have been asserted by the Settling Plaintiffs in any other action or proceeding against the Settling Defendants, which arise or relate to the subject matter of these Actions or any matters, transactions, occurrences . . . referred to in the pleadings . . . including but not limited to . . . claims for violations of . . . state securities laws . . . money damages, rescission . . . and actions arising under state statutory or common law . . . "

At the oral argument, I asked counsel for the Class plaintiffs if there ever was an objection to the breath of the release brought to the attention of the Federal Court supervising the Roll-Up Litigation. The answer was no.

Plaintiffs participated in the litigation, accepted the benefits of the litigation to the tune of one million dollars, signed a broad release, and never complained to the Federal Court about the terms of the settlement and release.

Today, the plaintiffs say the release is meaningless because the class notices they received did not specifically say that the class action involved the Illinois claims against Equitec for rescission because of violations of Illinois Security Laws, and that they had no opportunity to opt out.

Before answering that contention, it must be pointed out that the order entered by the Federal Court in the Roll-Up Litigation approving the settlement and releases, specifically found that the members of the class had been afforded due process. But directly to the notice issue, a) the plaintiffs participated in the litigation and are presumed to be aware of the pleadings and course of the litigation and, b) *Grimes v. Vitalink Communications*, 17

F.3d 1553 (3rd Cir. 1993), *cert. den.*, 513 U.S. 986 (1994) seems to put the plaintiffs' argument to rest. They were entitled to object, despite the lack of opportunity to opt out. They did not object. Specifically, the *Grimes* court held that notice of class action plus the opportunity to be heard and participate in the litigation is all that is needed to satisfy the due process rights of nonresident class members, even it [sic] members were not given an opportunity to opt out.

The Hallwood defendants also assert that the class plaintiffs specifically released and gave up any state security law violations against Equitec and Hallwood as well as a right to rescission of any contracts mentioned in the pleadings. The Roll-Up Litigation pleadings certainly referred to claims against Equitec for selling Real Estate Trusts. Moreover, the claim in this Illinois litigation involves a request for rescission of the real estate trusts agreements entered into by class plaintiffs and Equitec here in Illinois because of violations of Illinois Security Laws.

A more direct and unambiguous reading of the release can't be imagined.

Lastly, the Hallwood defendants say the class plaintiffs agreed to release every claim that arises from the Roll-Up Litigation. I believe this contention must fail. The subject matter of the Roll-Up Litigation was the supposed security law violations of Hallwood and Equitec in the purchase by Hallwood of Equitec's interests in the Real Estate Trusts.

Nevertheless – on two ground [sic], the Release that class plaintiffs signed in the Equitec Roll-Up Litigation clearly encompasses the claims and causes of actions in

the case at bar. I have heard no arguments that convince me that the Release should not be enforced.

To reiterate, class plaintiffs in this Illinois litigation were members of the class in the Equitec Roll-Up Litigation. They were represented in the Roll-Up Litigation by able and experienced attorneys. The genesis of the Roll-Up Litigation, as indicated in the pleadings there, was Equitec's sales of Real Estate Trusts nationwide (which included these plaintiffs in Illinois). They agreed to release Equitec and Hallwood from all claims referred to in the pleadings (here, the sale of Real Estate Trusts) and more specifically, agreed to release all claims for violations of state security laws, for money damages, rescission, or actions arising under state statutory or common law. For this promise, class plaintiffs received one million dollars. A bargain is a bargain. There has been consideration. The plaintiffs must live up to their bargain even if they do not feel it is sufficient. They never objected when they had an opportunity to do so. They cannot maintain this action against the Hallwood defendants.

As an aside, even after receiving the million from the Roll-Up Settlement, a few years later, plaintiffs received another 1.2 million dollars in a settlement with Equitec.

Because of this ruling, I am not required to address the Laches question.

The Hallwood defendants' Motion for Summary Judgment is granted. Unless I am mistaken, as to the Hallwood defendants, this decision resolves all the disputes between the class plaintiffs and the Hallwood defendants. Therefore, this is a final and appealable order.

ENTER:

Thomas A. Hett
Judge of the Circuit Court

DATED: February ___, 2000

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re EQUITEC ROLLUP LITIGATION	) Master File No. C-90-2064 CAL
This Document Relates to: ALL ACTIONS.	) **NOTICE OF PENDENCY OF CLASS ACTION**

TO: ALL PERSONS WHO HELD INTERESTS AS OF APRIL 30, 1990, IN ANY OF THE FOLLOWING EQUITEC-SPONSORED REAL ESTATE LIMITED PARTNERSHIP AND EXCHANGED THOSE INTERESTS FOR LIMITED PARTNERSHIP INTERESTS IN HALLWOOD REALTY PARTNERS, L.P., AS A RESULT OF THE CLOSING OF THE SUBJECT EXCHANGE TRANSACTION ON NOVEMBER 1, 1990.

> Equitec 83 Real Estate Investors; Equitec Real Estate Investors Fund XIII; Equitec Real Estate Investors Fund XIV; Equitec Real Estate Investors Fund XV; Equitec Real Estate Investors Fund XVI; Equitec Real Estate Investors Fund 17; Equitec Real Estate Investors Fund 18; and Equitec Income Real Estate Investors Fund A.

1.1 YOU ARE HEREBY NOTIFIED pursuant to Rule 23(c)(2) of the Federal Rules of Civil Procedure and Order of this Court that there is pending an action ("Action") which alleges violations of certain federal securities laws and state common law by defendants in connection with the dissemination of a Proxy Statement/Prospectus soliciting consents to the 1990 exchange of certain interests in the above-identified Real Estate

Limited Partnerships (RELPs) for publicly-traded shares in an entity named Hallwood Realty Partners, L.P., a Master Limited Partnership (MLP).

1.2 By order dated August 1, 1991, the Court determined that this Action should proceed as a class action. The class consists of all persons who, as of April 30, 1990, held interests in any of the following Equitec-sponsored Real Estate Limited Partnerships and exchanged those interests for limited partnership interests in Hallwood Realty Partners, L.P., as a result of the closing of the subject exchange transaction on November 1, 1990:

> Equitec 83 Real Estate Investors; Equitec Real Estate Investors Fund XIII; Equitec Real Estate Investors Fund XIV; Equitec Real Estate Investors Fund XV; Equitec Real Estate Investors Fund XVI; Equitec Real Estate Investors Fund 17; Equitec Real Estate Investors Fund 18; and Equitec Income Real Estate Investors Fund A.

Excluded from the Class are the defendants, members of their immediate families, any entity in which any defendant has a controlling interest, and the legal representatives, heirs, successors, predecessors-in-interest or assigns of any defendant.

1.3 This notice is not an expression of any opinion by the Court with respect to the merits of the claims or the defenses asserted in this Action. This Notice is merely to advise you of the pendency of the Action as a Class Action and of your rights therein.

1.4 In general, plaintiffs have asserted claims against defendants for alleged violations of the federal securities laws and state common law. The plaintiffs allege, among other matters, that the defendants made

misstatements and omissions of material fact in connection with the dissemination of the above-identified Proxy Statement/Prospectus. Some of the defendants in the Action include Equitec Financial Group, Inc. (EFG), Equitec Properties Company (EPC), The Hallwood Group and Hallwood Realty Partners, L.P. On August 29, 1990, EFG and EPC filed voluntary petitions in the United States Bankruptcy Court, Northern District of California, to reorganize under Chapter 11 of the Bankruptcy Code. As of the date of this Notice, this Action, as it relates to debtors EFG and EPC only, has been subject to a stay pursuant to the Bankruptcy Code. The Action will continue as to those defendants not in bankruptcy. The Defendants have generally denied all material allegations of wrongdoing and denied any liability to plaintiffs and the Plaintiff Class. No court has passed on the merits of the claims asserted in the Action.

2.1 If you wish to be included in the Plaintiff Class, you do not need to take any action. As a class member, the judgment in this Action, whether favorable or not, will apply to your claims and will be binding upon you and the Defendants. As a class member, you will be represented by David B. Gold, A Professional Law Corporation, which has been appointed by the District Court to act as Lead Counsel for the Class. You may, if you desire, enter an appearance in this Action through your own counsel at your own expense. If you desire to enter an appearance, you must file such appearance on or before September 28, 1991 with the Office of the Clerk, United States District Court, Northern District of California, 450 Golden Gate Avenue, San Francisco, California 94102, and serve such appearance on counsel for plaintiffs identified in Paragraph 3.2.

2.2 If you wish to be excluded from the Action, you may do so as set forth below. If you request exclusion from the class in the Action: (a) you will not share in a recovery, if any, by the class whether reached by settlement or judgment; and (b) you will not be bound by a judgment for or against the class if one is reached. In order to request to be excluded from the Class, you must state, in writing, (1) your name, (2) your address, (3) the number of units in Equitec-sponsored partnerships which you held as of April 30, 1990 and exchanged in the closing, and (4) your request for exclusion, and mail such request by September 28, 1991 to: *Equitec Rollup Litigation*, P.O. Box 5100, Larkspur, California 97977-5100.

3.1 Banks, brokerage firms, institutions and other persons who are nominees who held interests in the above-identified partnerships on April 30, 1990, for the beneficial interest of other persons, are requested within fifteen (15) days of receipt of this Notice to provide plaintiffs' counsel with the names and addresses of such beneficial owners or to request additional postage-prepaid copies of the Notice from plaintiffs' counsel for forwarding to such beneficial owners.

3.2 For further information concerning the Action, you may refer to the pleadings and other papers filed with the District Court, all of which may be inspected at the Office of the Clerk, United States District Court, U.S. Courthouse, 450 Golden Gate Avenue, San Francisco, California. All inquiries regarding the Action should be addressed to plaintiffs' Lead Counsel: DAVID B. GOLD, A Professional Law Corporation, 595 Market Street, Suite 2300, San Francisco, CA 94105. Attn: Rita Mitas.

3.3 Please do not call the Clerk or the Court.

DATED: August 22, 1991

Richard W. Wieking, Clerk
United States District Court
Northern District of California

THIS NOTICE RELATES TO:
THE HALLWOOD/EQUITEC ROLLUP

THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

In re EQUITEC ROLLUP LITIGATION	)	Master File No. C-90-2064-CAL
This Document Relates to: ALL ACTIONS.	)	**Class Action**

NOTICE OF HEARING ON PROPOSED SETTLEMENT OF CLASS AND DERIVATIVE ACTIONS AND AABERG ACTION

TO: ALL PERSONS WHOSE INTERESTS IN EQUITEC REAL ESTATE LIMITED PARTNERSHIPS WERE EXCHANGED FOR SECURITIES ISSUED BY HALLWOOD REALTY PARTNERS, L.P.

ALL PERSONS WHO, ON APRIL 11, 1994, OWNED A BENEFICIAL INTEREST IN HALLWOOD REALTY PARTNERS, L.P. ("HRP UNITHOLDERS")

SPECIAL NOTE

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. IT MAY AFFECT YOUR RIGHTS.

IN ORDER TO BE ENTITLED TO SHARE IN THE CASH PROCEEDS OF THE SETTLEMENTS, YOU MUST COMPLETE AND RETURN THE ENCLOSED PROOF OF CLAIM AND RELEASE FORM ON OR BEFORE OCTOBER 31, 1994.

This Notice is given pursuant to Rules 23 and 23.1 of the Federal Rules of Civil Procedure and pursuant to an Order of the United States District Court for the Northern District of California (the "District Court"). The purpose of this Notice is to advise you of two separate settlements (the "Settlements") in the Actions which are set forth in Stipulations of Settlement dated as of April 7 and April 11, 1994 (the "Stipulations"), and which provide, among other things, for the creation of Settlement Funds in the principal amount of Thirty Five Million Five Hundred Thousand Dollars ($35,500,000) which consists of (1) Thirty Millions Dollars ($30,000,000) in cash plus interest and (2) two promissory notes guaranteed by Smith Barney Holdings Inc. with a combined face value of Five Million Five Hundred Thousand Dollars ($5,500,000). In addition, plaintiffs negotiated the waiver of approximately $6 million in attorneys' fees and expenses which Smith Barney Inc. (sued herein as Smith Barney, Harris Upham & Co. Incorporated) ("Smith Barney") and Dean Witter Reynolds Inc. ("Dean Witter") claimed were owed to them by Hallwood Realty Partners, L.P. ("HRP") or its affiliates.

PART I: BACKGROUND OF LITIGATION

1. The litigation affected by the Settlements consists of class actions (the "Class Actions") which were filed on and after July 23, 1990 and a consolidated action filed on behalf of certain individuals which is referred to as the "Aaberg Action." Collectively, the Class Actions and the Aaberg Action are referred to as the "Actions." The Actions assert various claims on behalf of those persons whose interests in certain Equitec Partnerships were exchanged for units issued by Hallwood Realty Partners, L.P. ("HRP"). Plaintiffs allege, among other things, that the

defendants violated the federal securities laws in issuing statements and disseminating documents to the Equitec Investors in connection with the solicitation of their consents to the exchange transaction or the Hallwood/Equitec Rollup. In addition, plaintiffs in the Class Actions asserted certain derivative claims on behalf of HRP against certain HRP directors and officers and affiliates of HRP relating to certain transactions which took place subsequent to the closing of the Rollup. Plaintiffs in the Class Actions alleged, among other things, that defendants breached their fiduciary duty to HRP Unitholders by adopting a unitholders' rights plan, paying an asset management fee to Hallwood Realty Corporation ("HRC"), opposing plaintiffs' demand to rescind the Rollup, by entering into an affiliated transaction which has since been rescinded and indemnifying certain defendants for attorneys' fees and expenses incurred in connection with the defense of the Actions. Plaintiffs' direct and derivative claims are being settled under the terms of the Settlements.

2. The Settlements occurred after more than 52 days of trial on the claims related to the Hallwood/Equitec Rollup and after the presentation of plaintiffs' and defendants' evidence had been concluded. During the course of the trial, the District Court made certain rulings on various motions. In light of the foregoing, both plaintiffs and defendants were aware of and considered the legal, evidentiary and economic risks which they faced before reaching these settlements. Additionally, the uncertainty and the risk of the outcome of continued litigation, especially in complex actions such as these, and the difficulties and delays inherent in such actions weighed in favor of the Settlements in these actions. The expense and length of

continued proceedings necessary to continue the litigation against the Settling Defendants through verdict, judgment and appeals would have also been substantial. The Settling Parties have therefore determined that the settlements described below are in their respective best interests.

3. Those defendants named in the Actions who have agreed to settle under two separate settlements ("Settling Defendants") include The Hallwood Group Incorporated ("Hallwood Group"), Hallwood Realty Corporation ("HRC"), HRP, Anthony Gumbiner, Brian Troup, William Guzzetti, John Tuthill, Jeffrey Gent (collectively the "Hallwood Defendants"), Smith Barney and Dean Witter.

4. Settling Defendants have denied and continue to deny all the claims and contentions of wrongdoing asserted in the Actions, have denied and continue to deny any liability arising out of the conduct alleged therein, and have asserted various defenses thereto. The giving of this Notice is not meant to imply that there has been any violation of the law.

5. If you exchanged interests in an Equitec real estate limited partnership for units issued by HRP, you may be entitled to recovery under the Settlements.

6. Upon the Effective Date, Settlement Class Members and HRP Unitholders will be bound by a judgment entered in the District Court. The rights of Settlement Class Members and HRP Unitholders, other than the Settling Defendants, will be represented by Settlement Counsel designated by the District Court, Paul F. Bennett, Esq., Gold & Bennett, A Professional Law Corporation, 595 Market Street, Suite 2300, San Francisco, CA 94105-2835, Telephone: (415) 777-5149. You may, but are not

required to, enter an appearance personally or through your own counsel at your own expense.

PART II: THE SETTLEMENT CLASS AND THE AABERG PLAINTIFFS

7. The Settlement Class means the Representative Plaintiffs, who are Robert and Marilyn Greathouse, Edward and D'Loris Giavia, Stephen Maag, Anne Petrocci, Leilani Linder, Dorothy Ashburn and William Blevens, as well as all persons and entities who, on April 30, 1990, owned interests beneficially in any of the following Equitec-sponsored Real Estate Limited Partnerships and exchanged those interests for units in Hallwood Realty Partners, L.P., as a result of the closing of the Exchange Transaction, the Hallwood/Equitec Rollup, on November 1, 1990:

- Equitec 83 Real Estate Investors;
- Equitec Real Estate Investors Fund XIII;
- Equitec Real Estate Investors Fund XIV;
- Equitec Real Estate Investors Fund XV;
- Equitec Real Estate Investors Fund XVI;
- Equitec Real Estate Investors Fund 17;
- Equitec Real Estate Investors Fund 18; and
- Equitec Income Real Estate Investors Fund A.

Excluded from the Class are the defendants, members of their immediate families, any entity in which any defendant has a controlling interest, and the legal representatives, heirs, successors, predecessors-in-interest or assigns of any defendant or any person, including the Aaberg Plaintiffs, who requested exclusion from the Class and who did not rejoin the class pursuant to order of the District Court.

8. "Aaberg Plaintiffs" means all of the persons who (1) were named as plaintiffs in the Aaberg Action and (2) did not rejoin the class pursuant to order of the District Court.

9. Upon the Effective Date, each Settlement Class Member, each Aaberg Plaintiff and each HRP Unitholder will be barred and permanently enjoined from commencing, prosecuting or continuing to prosecute, either directly or indirectly, against the Settling Defendants, any and all claims, causes of action or lawsuits, which they had or have arising out of, relating to or based upon any of the Settled Claims as defined in the Stipulations and described herein.

PART III: SUMMARY OF PROPOSED SETTLEMENTS

10. The proposed settlements, which require approval by the District Court, consist of cash payments and the issuance of two promissory notes by the Settling Defendants in these Actions in the aggregate amount of Thirty-Five Million Five Hundred Thousand Dollars ($35,500,000.00) (the "Settlement Fund"). The Settlement Fund includes payments by and on behalf of (1) Dean Witter in the principal amount of Twelve Million Five Hundred Thousand Dollars ($12,500,000) in cash, (2) the Hallwood Defendants and Smith Barney in the principal amount of Seventeen Million Five Hundred Thousand Dollars ($17,500,000.00) in cash, (One Million Seven Hundred and Fifty Thousand Dollars ($1,750,000) of which shall be paid by HRP from the proceeds of a loan by Smith Barney Holdings Inc. to HRP which is secured by mortgages on several HRP properties); (3) a negotiable

promissory note from HRP in the amount of Four Million Dollars ($4,000,000.00) payable in two years and six months, plus interest at six percent (6%) per annum, payment of which is guaranteed by Smith Barney Holdings Inc. in consideration for which HRP has agreed to reimburse immediately Smith Barney Holdings Inc. in full any and all amounts paid by Smith Barney Holdings Inc. under its guaranty of HRP's promissory note and such reimbursement obligation is secured by mortgages on several HRP properties and HRP will supplement the value of such collateral with security interests in such other collateral as shall adequately secure Smith Barney Holdings Inc.'s guarantee of HRP's promissory note to plaintiffs and Smith Barney Holdings Inc.'s One Million Seven Hundred and Fifty Thousand Dollars ($1,750,000) loan to HRP such that the aggregate equity value of the collateral shall be not less than one hundred fifty percent (150%) of Smith Barney Holdings Inc.'s total exposure in respect of HRP; and (4) a negotiable promissory note from the Hallwood Group in the amount of One Million Five Hundred Thousand Dollars ($1,500,000.00) payable in two years plus interest at seven and one-half percent (7-1/2%) per annum, payment of which is guaranteed by Smith Barney Holdings Inc. in consideration for which the Hallwood Group has agreed to immediately reimburse Smith Barney Holdings Inc. in full any and all amounts paid by Smith Barney Holdings Inc. under its guaranty of the Hallwood Group's promissory note and such reimbursement obligation is secured by a security interest in certain shares of common stock of the Hallwood Energy Corporation ("HEC") and the Hallwood Group will supplement the value of such collateral with additional shares of HEC as necessary such that the aggregate equity value of the collateral shall be not less than one hundred and

fifty percent (150%) of Smith Barney Holdings Inc.'s total exposure in respect of the Hallwood Group. The Settlement Funds have been accruing interest for the benefit of the Settlement Class Members and the Aaberg Plaintiffs and their respective counsel pending distribution.

11. Upon the Effective Date, Settlement Counsel shall have the authority to sell, assign, pledge or hypothecate the promissory notes described above subject to the approval of the District Court.

12. In addition, under the respective settlements, Dean Witter and Smith Barney have agreed to waive all claims for unpaid attorneys' fees and costs in connection with this litigation that they otherwise had against HRP, HRC and Hallwood Group. At the time that the Settlements were reached, Dean Witter and Smith Barney had such claims in the amount of approximately $6 million.

13. The Settlement Fund, less notice and administrative expenses incurred in processing the settlements, will be divided between Settlement Class Members and the Aaberg Plaintiffs based upon claims submitted to and approved by the District Court as more specifically set forth in Section VI. Since the final allocation of funds between the Settlement Class (the "Class Fund") and the Aaberg Plaintiffs (the "Aaberg Fund") will be based on Court approved claims, the precise amount of the Class Fund and the Aaberg Fund is not now known. Assuming that all potential claimants were to file approved claims and based upon the Plan of Allocation of Settlement Proceeds described in Section VI, it is estimated that the Class Fund would equal approximately $33 million (or 93% of the Settlement Fund) and the Aaberg Fund would

equal approximately $2.5 million (or 7% of the Settlement Fund).

14. The Class Fund will be reduced by such amounts as are disbursed to pay for attorneys' fees, costs, expenses and interest thereon as may be awarded by the District Court to counsel for the Settlement Class. The Aaberg Fund will be reduced by such amounts as are paid to counsel for the Aaberg Plaintiffs for the attorneys' fees, costs and expenses as provided in their retainer agreements with the Aaberg Plaintiffs.

15. The Settlements described herein are intended to resolve finally all litigation among the Settling Plaintiffs and the Settling Defendants. Accordingly, the Hallwood Defendants shall dismiss (1) their appeals of judgments approving a settlement in actions known as *Duval v. Gleason,* (2) their appeal of the District Court's attorney fee award in the matter arising out of the "Stanwick Transaction" and (3) release and waive all claims to any funds obtained as a result of either of the foregoing matters. Likewise, the class plaintiffs shall dismiss with prejudice, with each side to bear its own costs, a related action filed on April 1, 1993, which is captioned as *Maag v. Weil, Gotshal & Manges,* No. C-93-1138 CAL (N.D. Cal.). The Aaberg Plaintiffs have agreed not to appeal from the District Court's order dismissing their claims against Weil, Gotshal & Manges with prejudice and each of the parties have agreed to bear their own costs.

16. In general, if you are a Settlement Class Member or a plaintiff in the Aaberg Action, you will be entitled to participate in the distribution of the Settlement Fund. HRP Unitholders who are not Settlement Class Members or who are not Aaberg Plaintiffs are not entitled to participate in the distribution of the Settlement Funds. A

specific Plan of Allocation of Settlement Proceeds (the "Plan of Allocation") has been proposed for Settlement Class Members and the Aaberg Plaintiffs. See Part VI for a more detailed description of the proposed Plan of Allocation.

17. The Settlements are not to be construed for any purpose whatsoever as an inference or admission or concession of liability or wrongdoing by any of the Settling Defendants.

18. As part of the Settlements, the Actions will be dismissed with prejudice as to the Settling Defendants and the Settling Plaintiffs and HRP Unitholders will release and discharge the Settling Defendants from any liability with respect to the Settled Claims as defined in the Stipulations. As used herein, the term Settling Defendants means Smith Barney, Dean Witter, and the Hallwood Defendants, and also generally all of their respective predecessors and successors, and all of their present and former parents, subsidiaries and affiliates and partners, and each of their respective present and former directors, officers, employees, attorneys, auditors, accountants, insurers, reinsurers, spouses, representatives, agents, assigns, and their respective heirs, executors and administrators.

19. As defined in the Stipulations and as used herein, "Settled Claims" means any and all claims, causes of action, suits, demands or requests for relief, known or unknown, that are or were asserted or could have been asserted in the Actions and each and every complaint filed in the Actions, Plaintiffs' Statement of Issues To Be Tried and all amendments thereto, or claims which are otherwise referred to or described in any of the letters, pleadings, briefs, expert reports, trial testimony or deposition

testimony (whether direct, indirect, class, or derivative, and whether representative or individual in nature), and all such claims which could have been asserted by the Settling Plaintiffs in any other action or proceeding against the Settling Defendants which arises or relates to the subject matter of these Actions or any matters, transactions, occurrences or omissions referred to in the pleadings, motions, discovery, trial or other papers and proceedings in any of these Actions, including but not limited to, claims relating to fees paid to Hallwood Group or its affiliates by HRP, claims for violations of the federal securities laws, state securities laws, Racketeering Influenced and Corrupt Organizations Act, breach of fudiciary duty, waste, mismanagement, money damages, recission, self-dealing, and actions arising under state statutory or common law (whether or not the relief requested is for money damages, attorneys' fees or some form of injunctive or other equitable relief) up through the entry of the District Court's Notice Order.

20. The proposed Settlements require the District Court to enter an order which, in general, bars contribution or indemnity claims against the Settling Defendants by other defendants and other joint tortfeasors. Such orders may have the effect of reducing, in certain specific situations, plaintiffs' damage claims against Non-Settling Defendants. In this circuit, there is legal precedent which allows the District Court to enter such orders ("Bar Orders"). There may, however, be risks to the Settlement Class in the entry of Bar Orders. There is appellate authority in this circuit which holds that, where a Bar Order is entered, any judgment based on joint and several liability against other defendants must be reduced by a settling defendant's proportionate liability irrespective of

the amount obtained by way of settlement. Settlement Counsel have taken into account these legal principles, the potential that the entry of a Bar Order could adversely affect the collectability on future litigated judgments and the likelihood of obtaining these Settlements at these amounts without the entry of a Bar Order. Settlement Counsel have concluded that, although these issues raise some degree of risk to the Settlement Class, these risks are offset by concluding these Settlements for a substantial dollar amount while, at the same time, preserving damage claims against the other defendants. After the Effective Date, Settlement Counsel intends to seek the District Court approval for authority to pay from the Settlement Fund future out-of-pocket costs incurred in the prosecution of claims against the Non-Settling Defendants. The District Court's determination on such a request, if any, shall not in any way affect the validity or finality of the Settlements.

21. The parties have agreed, for purposes of Settlement only and without prejudice to any party's position should the Stipulation not be finally approved, that the derivative claims asserted in the Class Actions are properly maintained as derivative claims on behalf of HRP under Rule 23.1 of the Federal Rules of Civil Procedure.

22. If the District Court does not approve the Settlements between Settling Plaintiffs and the Settling Defendants, or if the Settlements are otherwise terminated in accordance with their terms, then the rights and duties of the respective parties to the terminated Settlement(s) will revert to their respective status as of the date and time immediately prior to the execution of the Settlement(s).

PART IV: NOTICE OF SETTLEMENT HEARINGS

23. The District Court has ordered that hearings (the "Settlement Hearings") be held before the Honorable Charles A. Legge, United States District Judge for the Northern District of California, at the United States Courthouse, 450 Golden Gate Avenue, San Francisco, California on September 28, 1994 at 2:30 p.m. concerning the fairness, reasonableness and adequacy of the Settlements described above to Settlement Class Members and to HRP Unitholders.

24. If you are a Settlement Class Member or an HRP Unitholder as of April 11, 1994, you may appear personally or by counsel, and be heard at the Settlement Hearing and may object to or express your views regarding the Hallwood/Smith Barney Settlement. However, you will not be heard or entitled to contest the approval of the Hallwood/Smith Barney Settlement unless, on or before September 19, 1994, you file a notice of intention to appear, which sets forth the number of HRP units you received in the Exchange and/or the number of units you owned as of April 11, 1994, and states your objections or comments, in writing, with the Clerk of the District Court, together with all papers to be submitted to this Court at the Settlement Hearing, and **ON OR BEFORE THAT DATE,** such papers must also be served on and **RECEIVED** by Paul F. Bennett, Esq., Gold & Bennett, A Professional Law Corporation, 595 Market Street, Suite 2300, San Francisco, California 94105; John C. Millian, Esq., Gibson, Dunn & Crutcher, 1050 Connecticut Avenue, N.W., Suite 900, Washington, D.C. 20036; Gerald Kerner, Esq., Willkie Farr & Gallagher, 153 East 53rd Street, New York, New York 10022; and Dennis J. Block, Esq., Weil,

Gotshal & Manges, 767 5th Avenue, New York, New York 10153.

25. If you are a Settlement Class Member, you may appear personally or by counsel, and be heard at the Settlement Hearing and may object to or express your views regarding the Dean Witter Settlement. However, you will not be heard or entitled to contest the approval of the Dean Witter Settlement *unless*, on or before September 19, 1994, you file a notice of intention to appear, which sets forth the number of HRP units you received in the Exchange, and states your objections or comments, in writing, with the Clerk of the District Court, together with all papers to be submitted to this Court at the Settlement Hearing, and ***ON OR BEFORE THAT DATE,*** such papers must also be served on and ***RECEIVED*** by Paul F. Bennett, Esq., Gold & Bennett, A Professional Law Corporation, 595 Market Street, Suite 2300, San Francisco, California 94105; John C. Millian, Esq., Gibson, Dunn & Crutcher, 1050 Connecticut Avenue, N.W., Suite 900, Washington, D.C. 20036; Gerald Kerner, Esq., Willkie Farr & Gallagher, 153 East 53rd Street, New York, New York 10022; and Dennis J. Block, Esq., Weil, Gotshal & Manges, 767 5th Avenue, New York, New York 10153.

PART V: NOTICE OF FEE HEARING

26. The Class Fund shall be reduced by allowances for class plaintiffs' attorneys' fees, costs and expenses (including charges for the fees and costs of experts) incurred and to be incurred in the Class Actions and interest thereon. Applications for such attorneys' fees, costs, expenses and interest will be heard by the Honorable Charles A. Legge on September 28, 1994, (the "Fee Hearing"), at 2:30 p.m.

at the United States Courthouse, 450 Golden Gate Avenue, San Francisco, California at which time the Honorable Charles A. Legge shall determine the amount of class plaintiffs' attorneys' fees, costs, expenses, including expert fees and costs, and interest which shall be awarded to plaintiffs' counsel. Counsel for the Settlement Class will not initially apply for an award by the District Court for attorneys' fees which exceeds $11,500,000 plus interest earned thereon. In addition, counsel for the Settlement Class will seek reimbursement of costs and expenses incurred, including fees and costs for experts, and interest thereon. Settlement Counsel, without further notice to the Settlement Class, may apply for additional fees, costs and interest incurred in, among other things, administering these Settlements.

27. If you are a Settlement Class Member, you may appear personally or by counsel at the Fee Hearing and may object to or express your views regarding any of the initial application(s) for attorneys' fees, costs and expenses which are submitted to this District Court. However, you will not be heard or entitled in any way to contest the approval of any application for attorneys' fees, costs and expenses, unless on or before September 19, 1994, you file a notice of intention to appear, which sets forth the number of HRP units you received in the Exchange, and states your objections, in writing, with the Clerk of this District Court, together with all papers to be submitted to this District Court at the Fee Hearing, and ***ON OR BEFORE THAT DATE,*** such papers must also be served on and ***RECEIVED*** by Paul F. Bennett, Esq., Gold & Bennett, A Professional Law Corporation, 595 Market Street, Suite 2300, San Francisco, California 94105; John C. Millian, Esq., Gibson, Dunn & Crutcher, 1050 Connecticut Avenue,

N.W., Suite 900, Washington, D.C. 20036; Gerald Kerner, Esq., Willkie Farr & Gallagher, 153 East 53rd Street, New York, New York 10022; and Dennis J. Block, Esq., Weil, Gotshal & Manges, 767 5th Avenue, New York, New York 10153.

28. The procedure for and the allowance or disallowance by the District Court of any applications by any of the counsel for the named plaintiffs in the Class Actions for attorneys' fees, costs, interest and expenses, including fees or costs of experts, to be paid out of the proceeds of the Class Fund, are not part of the Settlement, and any order or proceeding relating thereto shall not operate to terminate or cancel the Stipulations or affect their finality.

PART VI: PLAN OF ALLOCATION OF SETTLEMENT PROCEEDS AND NOTICE OF HEARING THEREON

29. If either or both of the Settlements are approved by the District Court and the Effective Date occurs, as defined in the Stipulations, the Claimants' Fund will be paid *pro rata* on behalf of Settlement Class Members and on behalf of the Aaberg Plaintiffs whose claims, filed in accordance with Part VIII of this Settlement Notice, are allowed by the District Court. The Claimants' Fund means the Settlement Fund less amounts paid or reserved for payment of expenses incurred in giving notice of and administering the Settlements, taxes and other approved expenses.

30. Counsel for the Settling Plaintiffs have submitted to the District Court for approval a "Plan of Allocation of Settlement Proceeds" (the "Plan of Allocation") which is based upon an analysis performed by experts retained by

counsel for the Settling Plaintiffs. The Plan of Allocation generally provides as follows:

a. Each Settlement Class Member and each Aaberg Plaintiff wishing to share in the Settlement Fund will be required to file a Proof of Claim and Release form.

b. All Authorized Claimants (defined in the Plan of Allocation to include all Settlement Class Members and Aaberg Plaintiffs who would qualify for membership in the class certified by the District Court and who submit a Proof of Claim and Release form), shall share *pro rata* in the Claimants' Fund based on the "Claim Per HRP Unit" which has been established for each of the eight Equitec Partnerships which participated in the Exchange as follows:

Equitec Partnership	**Claim per HRP Unit Received In Rollup**
Equitec 83 Real Estate Investors	$3.29
Equitec Real Estate Investors Fund XIII	$5.20
Equitec Real Estate Investors Fund XIV	$2.36
Equitec Real Estate Investors Fund XV	$3.62
Equitec Real Estate Investors Fund XVI	$5.43
Equitec Real Estate Investors Fund 17	$5.26
Equitec Real Estate Investors Fund 18	$3.89
Equitec Income Real Estate Investors A	$3.70

c. For Authorized Claimants who owned interests in only one of the eight Equitec Partnerships, their Allowed Claim will be determined by multiplying the number of HRP units received in the Exchange by the dollar amount of the claim per HRP Unit for the appropriate Equitec partnership.

d. For Authorized Claimants who owned interests in more than one of the eight Equitec Partnerships, the same calculation will be performed for each of the Equitec Partnerships owned. The Allowed Claim for such a person will then be determined by adding together the Allowed Claim for each of the Equitec Partnerships owned.

e. The Claimants' Fund will be divided into the Class Fund and the Aaberg Fund based on their *pro rata* share of Authorized Claims. Authorized Claimants who are Settlement Class Members will then receive a proportionate share of the Class Fund after payment of fees and expenses awarded by the Court. Authorized Claimants who are Aaberg Plaintiffs will receive a proportionate share of the Aaberg Fund after payment of fees and expenses allocated to the Aaberg Fund.

f. The Plan of Allocation also generally provides that the Court retains the power to deny the individual claim of any Settlement Class Member or Aaberg Plaintiff on equitable grounds. Such a determination may take into account, among other factors, the proof of eligibility or the nature and degree of any active participation by the claimant in the matters which gave rise to the Actions.

31. The District Court has ordered that a hearing (the "Allocation Hearing") be held before the Honorable Charles A. Legge, United States District Judge for the Northern District of California, at the United States

Courthouse, 450 Golden Gate Avenue, San Francisco, California 94102 on September 28, 1994 at 2:30 p.m. to determine the fairness and reasonableness of the Plan of Allocation. If you are a Settlement Class Member, you may appear personally or by counsel and be heard at the Allocation Hearing and may object to or express your views regarding the Plan of Allocation. However, you will not be heard nor be entitled in any way to contest the approval of the Plan of Allocation unless on or before September 19, 1994, you file your notice of intention to appear, which sets forth the number of HRP units you received in the Exchange, and states your objections or comments, in writing, with the Clerk of the District Court, together with all papers to be submitted to the District Court at the Allocation Hearing, and ***ON OR BEFORE THAT DATE***, such papers must also be served on and ***RECEIVED*** by Paul F. Bennett, Esq., Gold & Bennett, A Professional Law Corporation, 595 Market Street, Suite 2300, San Francisco, CA 94105; John C. Millian, Esq., Gibson, Dunn & Crutcher, 1050 Connecticut Avenue, N.W., Suite 900, Washington, D.C. 20036; Gerald Kerner, Esq., Willkie Farr & Gallagher, 153 East 53rd Street, New York, New York 10022; and Dennis J. Block, Esq., Weil, Gotshal & Manges, 767 5th Avenue, New York, New York 10153.

32. Approval or disapproval by the District Court of the Plan of Allocation shall not affect the validity of either of the Settlements if they are approved by the District Court.

PART VII: NOTICE TO BANKS, BROKERS AND OTHER NOMINEES

33. Pursuant to an order of the District Court, each bank, brokerage firm and other nominee for any of the following beneficial owners shall either forward the Settlement Notice to such beneficial owners or send a list of the names and addresses of their beneficial owners to Settlement Counsel within ten (10) days of receipt of this Notice and the Proof of Claim form: (1) all persons whose interests in Equitec real estate limited partnerships were exchanged for securities issued by Hallwood Realty Partners, L.P. on or about November 1, 1990; and (2) all persons who owned a beneficial interest on April 11, 1994 in Hallwood Realty Partners, L.P. units. Additional copies of this Notice and of the Proof of Claim and Release may be obtained, without charge, by any such nominee by written request to the Clerk of the United States District Court for the Northern District of California, *In re Equitec Rollup Litigation*, Master File No. C-90-2064 CAL, c/o Gilardi & Co., Post Office Box 5100, Larkspur, California 94977-5100. Upon the receipt of a list of names and addresses of persons for whom nominees held Equitec Partnership interests which were exchanged for HRP units or for whom nominees held HRP units for beneficial owners as of April 11, 1994, Settlement Counsel shall mail a copy of this Notice and a copy of the Proof of Claim and Release form. Alternately, Settlement Counsel will pay from the Settlement Funds the reasonable cost of forwarding notice to beneficial owners in those cases where a nominee elects to forward notice rather than to provide a list of names and addresses to the Clerk of the Court as set forth above. Nominees shall be entitled to reimbursement of their reasonable costs in performing either of the above-described activities.

PART VIII: FILING OF PROOFS OF CLAIM

34. Any Settlement Class Member or Aaberg Plaintiff who wishes to share in the proceeds of the Settlements described in this Notice must submit a Proof of Claim and Release form no later than October 31, 1994, regardless of whether or not such person has filed and served any objections pursuant to this Notice. Any Settlement Class Member or Aaberg Plaintiff who fails to submit a valid and timely Proof of Claim and Release form will be barred from sharing in the distribution of proceeds of the Settlements described herein.

35. A Proof of Claim and Release filed by mail shall be deemed to have been filed when postmarked, if mailed by first class mail, or registered or certified mail, postage prepaid and addressed in accordance with the instructions given on the Proof of Claim and Release form. All other Proof of Claim and Release forms shall be deemed to have been filed at the time they are actually received at the address set forth in Paragraph 36 below.

IMPORTANT

36. If you did not receive a Proof of Claim and Release form in the mail with this Class Notice, you may obtain a Proof of Claim and Release form by written request addressed to the Clerk of the United States District Court for the Northern District of California. *In re Equitec Rollup Litigation,* Master File No. C-90-2064 CAL, c/o Gilardi & Co., Post Office Box 5100, Larkspur, California 94977-5100. In your written request, you must include your name and your current address.

37. You may read or receive more than one copy of this notice. Regardless of how many copies of this Settlement Notice you read or receive, you should submit ***only one*** Proof of Claim and Release form for each investment in an Equitec Partnership.

PART IX: FURTHER INFORMATION

38. This notice is not all-inclusive. For the full details of the matters disclosed in this notice, including the Settlements described above and for further information concerning the Actions, you may desire to refer to the pleadings and other papers, including the documents reflecting the Settlements, filed with the District Court in the Actions, all of which may be inspected at the office of the Clerk of the United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, California, during normal business hours.

39. For further information regarding this Notice, the Actions or the proposed settlements, Settlement Class Members and HRP Unitholders may contact, in writing:

Paul F. Bennett, Esq.
GOLD & BENNETT
A Professional Law Corporation
595 Market Street, Suite 2300
San Francisco, California 94105

PLEASE DO NOT CALL OR WRITE THE COURT OR THE CLERK'S OFFICE FOR SUCH INFORMATION.

Dated: August 15, 1994

Richard W. Wieking
Clerk of the Court
UNITED STATES DISTRICT COURT
Northern District of California